

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

HENRY MAE HARRIS

§

VS.

§

CIVIL ACTION NO. 6:09cv372

COMMISSIONER,

SOCIAL SECURITY ADMINISTRATION

§

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge John D. Love. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition.

Plaintiff filed objections. She objects to the statement in the Report that "[t]he Appeals Council is not required to explain the weight it gives to new evidence (*Jones v. Astrue*, 228 Fed. Appx. 403, 407 (5th Cir. Mar. 29, 2007), *cert. denied* 552 U.S. 1064)." Plaintiff contends that "a number of cases decided after *Jones v. Astrue* illustrate that, where the new evidence submitted to the Appeals Council contradicts the ALJ's decision and is from a treating physician, then the Appeals Council must explain how it evaluated the treating source opinion. The "number of cases" cited by Plaintiff are another case styled *Jones v. Astrue*, 2008 WL 3004514 (S.D. Tex. 2008), and *Stewart v. Astrue*, 2008 WL 4290917 (N.D. Tex. 2008). The Fifth Circuit Court Appeals, however, is binding authority on this Court, unlike the cited cases from the Southern and Northern District Courts of Texas.

Furthermore, in this case, the newly submitted evidence was from Dr. Shelby Johnson, whose

opinion that Plaintiff's carpal tunnel syndrome had existed since January 31, 2007, is inconsistent with both Plaintiff's March 31, 2007, assertion that she had no physical problems limiting her hands (*Tr.* at 136) and Dr. Johnson's other medical records. Plaintiff cannot show that she was prejudiced by the Appeals Council's weighing of Dr. Johnson's opinions.


Plaintiff also objects to what she considers to be the Court's reweighing of the evidence from Dr. Johnson. The Court has not reweighed the evidence. The Court reviewed the entire record evidence to determine whether substantial evidence supports the ALJ's decision. In doing so, the Court considered whether Dr. Johnson's evidence submitted to the Appeals Council would diminish the evidence supporting the ALJ's decision to such an extent that substantial evidence would not support the decision. The Court determined that the newly submitted evidence would not diminish the substantial evidence supporting the ALJ's decision.

This Court has made a *de novo* review of Plaintiff's objections and determined that they lack merit. This Court finds that the Magistrate Judge's findings and conclusions are correct and adopts them as the Court's findings and conclusions. The Court therefore

ORDERS, ADJUDGES, and DECREES that this action is **DISMISSED**; and

ORDERS that all motions not previously ruled on are denied.

SIGNED this 14th day of September, 2010.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE